

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

INDECK KEYSTONE ENERGY, LLC,
Plaintiff

v.

VICTORY ENERGY OPERATIONS, LLC,
Defendant

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:
:
: Case No. 04-325 Erie
:
:
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Deposition of ROBERT JOHN GDANIEC, taken before
and by Sondra A. Black, Notary Public in and for the
Commonwealth of Pennsylvania, on Tuesday, November 8,
2005, commencing at 9:06 a.m., at the offices of
Marshall Dennehey Warner Coleman & Goggin, 1001 State
Street, Erie, Pennsylvania 16501.

For the Plaintiff:

John K. Gisleson, Esquire
Schnader Harrison Segal & Lewis, LLP
Fifth Avenue Place
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222

For the Defendant:

Christopher T. Sheean, Esquire
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Chicago, IL 60606

Reported by Sondra A. Black
Ferguson & Holdnack Reporting, Inc.

CONFIDENTIAL

EXHIBIT

2

1 ROBERT JOHN GDANIEC, first having
2 been duly sworn, testified as follows:

3
4 DIRECT EXAMINATION

5 BY MR. SHEEAN:

6
7 Q. Sir, would you please state your name for the
8 record.

9 A. Robert John Gdaniec.

10 Q. Let the record reflect this is the deposition of
11 Robert John Gdaniec pursuant to subpoena and notice and
12 pursuant to the Federal Rules of Civil Procedure.

13 Mr. Gdaniec, can you please provide your home
14 address.

15 A. 4084 Zimmerman Road, Erie, Pennsylvania 16510.

16 Q. How long have you resided there?

17 A. Five years.

18 Q. And your business address?

19 A. Is 5300 Knowledge Parkway, Suite 200, Erie,
20 Pennsylvania 16510-4660.

21 Q. The name of your employer?

22 A. CMI EPTI, LLC.

23 Q. Have you ever had your deposition taken before?

24 A. No.

25 Q. I'm going to go over a couple quick ground rules

1 it was more appropriate that Heather then be directly
2 involved to understand what potential CMI EPTI liabilities
3 there could be involved with this. So at that point I
4 believe we just identified to Mr. Woodson that Heather would
5 be in contact with him.

6 Q. Anything else you can recall specifically from your
7 conversations with Mr. Woodson, other than what you've
8 already told me?

9 A. No. Nothing specific.

10 Q. I want to go into a little bit of your background
11 just so I can get an understanding. Did you attend high
12 school?

13 A. Yes, I did.

14 Q. Where did you attend high school?

15 A. Cathedral Prep in Erie, Pennsylvania.

16 Q. Did you graduate?

17 A. Yes, I did.

18 Q. What year?

19 A. Class of '83.

20 Q. Did you attend college or University after that?

21 A. Yes, I did.

22 Q. Where did you go to college?

23 A. Gannon University in Erie, Pennsylvania.

24 Q. What did you study at Gannon University?

25 A. Mechanical engineering.

1 Q. Did you obtain a degree in mechanical engineering?

2 A. Yes, I did.

3 Q. What year?

4 A. 1987.

5 Q. Did you have any minors or subspecialties?

6 A. No.

7 Q. Did you attend any postgraduate studies?

8 A. No, I did not.

9 Q. What was your first job after graduating from Gannon
10 University?

11 A. At Electric Boat in Groton, Connecticut.

12 Q. What did you do at Electric Boat?

13 A. I was a nonengineered -- or I was an engineered
14 components designer for a nonnuclear pump service.

15 Q. What were your job responsibilities?

16 A. Reviewing technical specifications, troubleshooting
17 in the shipyard, Naval support for Trident and 688 class
18 submarines.

19 Q. Anything else?

20 A. No.

21 Q. How long did you work for Electric Boat in Groton?

22 A. Two years.

23 Q. Till 1989?

24 A. Correct.

25 Q. What did you -- strike that. Where did you go in

1 1989?

2 A. I came back to Erie to work for Zurn Industry's
3 energy division.

4 Q. I'm sorry, what division?

5 A. Energy division.

6 Q. What was your first position at Zurn in 1989?

7 A. Design engineer in the engineering group.

8 Q. What were your responsibilities as design engineer?

9 A. Thermal performance, basic boiler design, boiler
10 circulation, basic calculations, piping sizing, pressure drop
11 calculations.

12 Q. Anything else?

13 A. Nothing in particular, no.

14 Q. How long were you a design engineer at Zurn?

15 A. Probably a year, maybe a year-and-a-half period.

16 Q. So sometime in 1990 you got a new position?

17 A. Yes.

18 Q. What was that?

19 A. Moved into -- at that time the company created a
20 group for specializing on HRSG product lines, and I was moved
21 into that group as an engineer in that group.

22 Q. What were your responsibilities as an engineer in
23 the HRSG group?

24 A. Similar to previous except specific to just the HRSG
25 product line. Basic boiler calculations, boiler sizing,

1 thermal performance, boiler circulation. Took on the
2 responsibility of software development for the group.

3 Q. What sort of software did you develop for the HRSGs?

4 A. The thermal performance rating program, the boiler
5 circulation program, routine engineering calculations, ASME
6 pressure vessel programs. Anything related to the design of
7 the boilers.

8 Q. Were you actually writing the software?

9 A. In part, with the gentlemen from the computer group,
10 yes. Some specifically to me, and others in conjunction with
11 the computer department.

12 Q. What language were those drafted in?

13 A. FORTRAN 77.

14 Q. Where'd you learn to write programs in FORTRAN?

15 A. At Gannon University.

16 Q. Anything else that you were responsible for as an
17 engineer for the HRSG group, other than what you've already
18 told me?

19 A. Over the period of time of probably five or six
20 years it was various responsibilities. Product engineering
21 became under my responsibility, took in charge of the
22 graphics and drafting area under my responsibility. It was
23 quite a number of positions.

24 Q. Anything else?

25 A. No. I can't recall.

1 Q. Before I forget, did you talk to Ted Fuhrman since
2 last night?

3 A. No, I have not.

4 Q. Did you talk to him last night?

5 A. No. I -- since yesterday morning when he was in the
6 office.

7 Q. What was the next position you had after engineer in
8 the HRSG group?

9 A. I don't recall the exact year, but at one point the
10 company decided to merge everything back into one function, I
11 would guess it was probably maybe 1992 time frame, and I
12 moved back into the main body of engineering and took over a
13 position that was specific to pressure vessel engineering.

14 Q. Are these the drum internals?

15 A. The drums -- the pressure parts themselves, the
16 drums, the tubes, anything ASME boiler code related, sizing
17 of safety valves, interpretation of the boiler code.

18 Q. Now, were you responsible for the pressure vessels
19 for all types of boilers or were you still working primarily
20 on the HRSGs?

21 A. No. This was all types of boilers. The company
22 made a decision that the HRSG product line was carrying the
23 business, so they merged everybody back into one function and
24 we then handled everything. The business was 90 percent
25 HRSG; however, it could be any product line at that point.

1 Q. Was it still Zurn at that point?

2 A. Yes.

3 Q. Was Zurn a privately held company at that time? If
4 you know.

5 A. I honestly don't know. I would say, yes, but I'm
6 not sure.

7 Q. How long were you in the main engineering department
8 operating -- what was your title at that time, when you were
9 moved back and you were taking over pressure vessel
10 engineering?

11 A. I think the title was pressure vessel engineer.
12 Again, I don't recall all the -- there's been a number of
13 moves in different positions and responsibilities, and I
14 don't recall.

15 Q. To the best of your recollection, what was the next
16 position that you took on?

17 A. Manager of technical software development.

18 Q. Do you recall what year that was?

19 A. No, I don't.

20 Q. It was still with Zurn?

21 A. Yes.

22 Q. What were your responsibilities as the manager of
23 technical software development?

24 A. I was responsible for all software that the company
25 wrote for the engineering group.

1 Q. Anything else?

2 A. No. That was -- it was a full-time job.

3 Q. How long were you the manager of software
4 development?

5 A. It was about a one-year period.

6 Q. What was the next position that you took?

7 A. Manager of engineering.

8 Q. And this is still Zurn?

9 A. Yes. Still under the Zurn Company, yes.

10 Q. Did you replace someone as manager of engineering at
11 that time?

12 A. Yes. At that time Frank Vona was the -- would have
13 been the chief engineer/manager of engineering. He had left
14 on leave of absence, and I replaced him in that position.

15 Q. What were your responsibilities as manager of
16 engineering?

17 A. Had full responsibility for coordinating the
18 day-to-day activities of the entire engineering group.

19 Q. Anything else?

20 A. It was everything under -- anything that was under
21 engineering was my responsibility at that period.

22 Q. So that was all products company-wide?

23 A. Everything, yes.

24 Q. Do you know what time frame that was when you became
25 manager of engineering?

1 A. Just prior to 1997 because it was just prior to the
2 time that the company was sold to Aalborg Industries.

3 Q. So, late 1996?

4 A. Yeah.

5 Q. You had testified before that the company was
6 relying -- strike that. You testified before that the
7 company sales were 90 percent HRSGs.

8 A. Yes. That's correct.

9 Q. Was that still true in '96?

10 A. Yes.

11 Q. What other boilers made up the 10 percent?

12 A. Package boilers and what we would have called
13 conventional boilers, two-drum type --

14 Q. Field erected?

15 A. Field erected, coal fired, wood fired, waste-heat
16 type boilers.

17 Q. What percentage of the company's business did the
18 package boilers represent?

19 A. At that period of time, probably 8 percent of the 10
20 percent that was remaining.

21 Q. 8 to 10 percent of that 10 percent?

22 A. Yes.

23 Q. So being an engineer, you'd agree it was about .8
24 percent of the overall sales for the company?

25 A. No. It was 8 percent of the total sales. 90

1 percent was HRSGs; the remaining 10 percent, 8 of that 10
2 percent was probably package boilers.

3 Q. What was the size range for the package boilers at
4 that time?

5 A. I don't recall. The majority of what the business
6 was pursuing, what we felt was competitive, was over about
7 100,000 pounds per hour capacity. So I would guess 125,
8 150s, 175, in that range probably.

9 Q. You said in 1997 the company was sold to Aalborg
10 Industries?

11 A. Yes. Correct.

12 Q. And that's A-A-L-B-O-R-G?

13 A. Correct.

14 Q. Did your title change when the company changed hands
15 to Aalborg Industries?

16 A. Yes. It became -- at that time we moved out of the
17 office on 1422 and moved up to the new office where we are
18 today, and when I moved up there, I became director of
19 technology.

20 Q. Was that a promotion from manager of engineering,
21 the director of technology?

22 A. Organizational, yes. It was fully responsible for
23 all of engineering and drafting and was a member of the staff
24 at that point.

25 Q. What does "a member of the staff" mean?

1 A. Reported directly to the president of the company
2 and was responsible for helping to make decisions and steer
3 the direction of the company.

4 Q. Who was the president of the company at that time?

5 A. Jim Davis.

6 Q. How long were you director of technology for Aalborg
7 Industries?

8 A. I would guess two years.

9 Q. Till about '99?

10 A. Correct.

11 Q. What happened in 1999?

12 A. I chose to step out of that position and took over
13 the role of chief engineer, and we brought in a manager-type
14 personality for the position.

15 Q. Who was that?

16 A. Mike Davidson.

17 Q. Did you report to Mr. Davidson?

18 A. Yes, I did.

19 Q. Why did you decide to step out of your position as
20 director of technology?

21 A. I felt my skills and what I could contribute to the
22 company were more beneficial in a pure technical role instead
23 of the administrative managerial role.

24 Q. During that two-year period, from '97 to '99, was
25 the percentage makeup of the company sales similar to what

1 you testified previously?

2 A. No. It had changed. There was less HRSG business.
3 Just guessing percentage, probably 70 percent of the business
4 was HRSG business. We had more in the other product lines,
5 probably a smaller -- higher percentage in the package
6 boilers and some traditional conventional-type boilers at
7 that period of time.

8 Q. Why did the HRSG market drop?

9 A. I couldn't tell you.

10 Q. How long were you chief engineer?

11 A. I was chief engineer up until 2004. So probably
12 four-year time period.

13 Q. Do you know who owned Aalborg Industries?

14 A. No, I don't.

15 Q. At some point did DKME become the owner of Aalborg
16 Industries?

17 A. No. It became the owner of the company. Aalborg
18 sold the company to DKME.

19 Q. What year was that?

20 A. I'm going to guess it was 2002. It was either 2002
21 or 2003.

22 Q. Do you recall what DKME stands for?

23 A. Dae Kang Machinery and Engineering Company.
24 Something like that. It was always known as DKME.

25 Q. Did your position change when Aalborg sold the

1 company to DKME?

2 A. No, it did not.

3 Q. You remained as chief engineer?

4 A. Yes. Correct.

5 Q. You identified Jim Davis as the president of the
6 company when it was Aalborg Industries, correct?

7 A. Yes. Correct.

8 Q. Did Mr. Davis stay on when the company was sold to
9 DKME?

10 A. No, he did not.

11 Q. Who took over as president?

12 A. Stephen Kang -- when it was DKME, Stephen Kang was
13 president of the company.

14 Q. Is it K-A-N-G?

15 A. Yes. Correct.

16 Q. Did you report to Mr. Kang?

17 A. Yes.

18 Q. What happened in 2004 that changed your position?

19 A. Mr. Kang had moved the company into bankruptcy, and
20 we were working very hard to take it out of bankruptcy, and
21 we were beginning to restructure the company, make some
22 administrative and position moves, at which time I was
23 promoted to vice president.

24 Q. Vice president of anything in particular or --

25 A. Just vice president.

1 Q. Who was the president at that time?

2 A. Stephen Kang.

3 Q. At some point the assets of the company were sold to
4 CMI EPTI?

5 A. Yes. Correct.

6 Q. That was in late August 2004?

7 A. September 8, 2004 was the hearing date for the sale
8 and closing.

9 Q. And after the assets were purchased by CMI, did you
10 change jobs?

11 A. I stayed vice president.

12 Q. Is that your position today?

13 A. Yes.

14 Q. Jumping back for a minute. When you were vice
15 president of the company in 2004, what were your
16 responsibilities?

17 A. It was -- there was three vice presidents at that
18 time, we shared responsibility for running the day-to-day
19 operations of the company.

20 Q. Who were the three vice presidents?

21 A. Dan Levstek and, at the beginning, Simon Kassas.

22 Q. When did Mr. Kassas leave?

23 A. It was almost at the same time I was promoted to
24 vice president. So it was probably March -- March --
25 February, March time frame of 2004, I believe. And then,

1 after that, it was just Mr. Levstek and I as vice presidents
2 in the company.

3 Q. Is Mr. Levstek with CMI EPTI?

4 A. Yes.

5 Q. Is he still a vice president?

6 A. Yes, he is.

7 Q. Who's the president of CMI EPTI?

8 A. Today it's Tino Vinkestyn. He's CEO, there is no
9 president.

10 Q. How do you spell Vinkestyn?

11 A. V-I-N-K-E-S-T-Y-N.

12 Q. Are there any other vice presidents besides you?

13 A. Yes. There's one other. Xavier D'Hubert,
14 D-H-U-B-E-R-T.

15 Q. - D'?

16 A. H-U-B-E-R-T.

17 Q. And is Xavier working in Erie?

18 A. Yes, he is.

19 Q. Mr. Vinkestyn as well?

20 A. Yes.

21 Q. Were you ever offered a position with Indeck
22 Keystone Energy?

23 A. No, I was not.

24 Q. Do you have any knowledge of how it was that certain
25 individuals who had been working for EPTI were offered

1 did you utilize in developing the new processes?

2 A. 95 percent of it is the same. The decision was made
3 that, even though we're a new company, we couldn't start from
4 scratch. You know, it's best to try to continually move the
5 company forward and not throw everything out and say start
6 over. It's not efficient.

7 Q. Do you have any engineering responsibilities
8 currently for CMI EPTI?

9 A. Yes. I'm responsible for all of the technical
10 aspects of the company. So engineering, drafting, and the
11 computer department, organization would report to me.

12 Q. Did you develop the KPSC design rating program for
13 the Keystone boilers?

14 A. Not directly myself, no, I did not.

15 Q. Who did?

16 A. Computer department people, and then a gentleman by
17 the name of Neil Bradwell.

18 Q. Were you involved in the design or rating of any
19 Keystone direct-fired watertube boilers during the time that
20 you worked at Zurn and Aalborg?

21 A. Yes.

22 Q. Let's start with Zurn. While you were employed by
23 Zurn, did Zurn sell any Keystone M series boilers with 100
24 percent welded wall construction?

25 A. No.

1 Q. Did Zurn sell any direct-fired O style watertube
2 boilers with welded wall construction?

3 A. Yes.

4 Q. Is it your testimony that the mere addition of
5 welded wall construction takes the boiler out of the realm of
6 the M series boiler?

7 A. Yes. The M series was a specific geometry
8 construction type and style of boiler for the company, and
9 that did not include welded waterwall panels.

10 Q. When was the last Keystone M series boiler sold by
11 Zurn Energy?

12 A. I have no idea. I'd have to look at records to see
13 that.

14 Q. When was the last Keystone M series boiler sold by
15 Aalborg Industries?

16 A. I'd have to look at the records. I don't know.

17 Q. When was the last Keystone M series boiler sold by
18 EPTI?

19 A. Last one I would guess is -- our order 2023 is the
20 last O-type boiler, and the drawings show it probably as an M
21 size. If you look at the title box, it's probably called an
22 M size. But that was the last O-type boiler that I recall
23 that we did.

24 Q. My question was the last M series boiler.

25 A. I don't know without looking.

1 Q. Was 2023 an M series boiler?

2 A. 2023 was an O-type boiler. I'd have to look at the
3 records to see exactly what it's called.

4 Q. Do you know who the customer was on that project?

5 A. It was Victory Energy.

6 Q. Was that the Heinz Plant?

7 A. Yes.

8 Q. Muscatine, Iowa?

9 A. I believe that's what it was, yes.

10 Q. And that was sold to Victory prior to the date of
11 the license agreement?

12 A. Yes. Correct.

13 Q. You just don't recall, as you sit here today --
14 strike that. Do you recall whether or not 2023 had 100
15 percent membrane construction?

16 A. I don't recall if it was 100 percent membrane
17 construction, but the furnace and side walls were membrane
18 construction, yes.

19 Q. Well, if the furnace and side walls were membrane
20 construction, could it be considered an M series boiler?

21 A. No. Because -- on the drawing it was probably shown
22 as an M series; however, internally to the company -- the
23 term M series boiler was used loosely in the company. The
24 style of boiler was an O-type boiler, and in the past, the M
25 series was standardized based on capacity, and certain

1 A. I don't know for sure.

2 Q. Now, you indicated that you were involved in the
3 company in reviewing the license agreement specific to Annex
4 1?

5 A. The entire license agreement, and -- in addition to
6 helping to develop and write Annex 1, yes.

7 Q. What was your understanding of how Annex 1 operated
8 in conjunction with the license agreement?

9 A. The license agreement spelled out a certain
10 technology was licensed per the description in Annex 1, and
11 the Annex 1 defined exactly what the product lines and ranges
12 and type of construction of the boiler that -- the license
13 agreement text itself was very generic to what it was trying
14 to accomplish, and Annex 1 was the specifics of what the
15 products were.

16 Q. Do you have any legal training?

17 A. No, I do not.

18 Q. But you did take the time to aide the agreement and
19 draft or revise Annex 1?

20 MR. GISLESON: Objection. Implication that legal
21 training is necessary to do so.

22 A. From my perspective of protecting the company's
23 interests, yes. I reviewed the documents and highlighted
24 areas which I felt were inconsistent with what the company
25 may want to do, yes. Absolutely.

1 that annex as to exactly what the license agreement entailed
2 for the period of time which it was effective.

3 Q. Now, you say there was an understanding in that
4 annex. Whose understanding?

5 A. Certainly, internally to the people that wrote it, a
6 clear understanding of the products. Outside of the office,
7 I'm not sure if there was a clear understanding.

8 Q. Prior to the signing of Annex 1 did you have any
9 conversation with anyone at Victory Energy so that you could
10 convey that clear understanding to anyone at Victory Energy?

11 A. No.

12 MR. GISLESON: Objection to the implication that it
13 was necessary to convey the understanding based on
14 what was in Annex 1.

15 MR. SHEEAN: You're coaching the witness now, John.

16 MR. GISLESON: I'm objecting to unclear questions.

17 A. No. At that time there was no need for discussion
18 from my perspective because Mr. White was put in full
19 responsibility, in control, of doing what was best for the
20 company. So, no, there was not.

21 Q. Did the license agreement authorize Victory Energy
22 to design, manufacture, and sell O style boilers with
23 membrane technology?

24 A. No, it did not.

25 Q. Did Victory Energy sell any Keystone boilers with

1 membrane technology under the license agreement?

2 A. Yes, they did.

3 Q. Do you know approximately how many of the boilers or
4 what percentage of the boilers that Victory sold included
5 membrane wall technology?

6 A. I would guess probably 70 percent of them did.

7 Q. In fact, all of the six -- first six sales that
8 Victory had under the license agreement included membrane
9 wall technology, didn't they?

10 A. I honestly don't know. At the time period we
11 weren't concerned about the specifics of what they were
12 selling. Again, given the timing of the company, it was more
13 important to watch the revenue stream. So we were encouraged
14 by the fact that they were able to sell boilers, and we were
15 not strictly enforcing any -- any degree of what was in the
16 license agreement.

17 Q. You said you weren't strictly enforcing it?

18 A. Correct. So from the perspective, if they had
19 welded walls, we never sent anything to them and said, please
20 stop selling welded wall style boilers. Because at that time
21 period it was more important to see that there was a revenue
22 stream and we were re-establishing the name in the industry
23 for the package boiler line.

24 MR. SHEEAN: Why don't we take a short break.

25 (Pause in the proceedings.)

1 identify everything because there were things that we would
2 not have known. But the intention was predominantly the
3 auxiliary equipment.

4 Q. So it was your understanding that Victory Energy was
5 permitted to make modifications to the line?

6 MR. GISLESON: Objection. Vague, mischaracterizes
7 the prior testimony.

8 Q. You can answer.

9 A. Yes. We knew there was a clause in there that
10 allowed them to make enhancements or improvements to the
11 product line that was licensed.

12 Q. And Mark White said as much in that first e-mail to
13 you, right?

14 A. Yes. He identified that there would need to be
15 improvements made, yes.

16 Q. Are you aware of any improvements that Victory
17 Energy made to the Keystone Energy boiler line?

18 MR. GISLESON: Objection. Vague, foundation.

19 A. No. That's one of -- I believe one of the
20 complaints we had with regards to identifying issues in the
21 license agreement that Victory was not notifying us if, in
22 fact, they were making improvements or enhancements to the
23 boiler.

24 Q. The inclusion of 100 percent membrane wall
25 technology, would that have been an improvement in the mind

1 of Erie Power, to the best of your knowledge?

2 MR. GISLESON: Objection. Vague, foundation.

3 A. No. Because what we licensed was the M series
4 product. We had another product line that included that,
5 which was the entire O boiler set of products. So in the
6 context of the M series boiler that was already established
7 and it was already an enhancement. It was not part of the
8 license agreement. And it became apparent when we were
9 working with Victory to try to sell the product line or what
10 Victory was looking to purchase under the product line got
11 into the nomenclature of, all M series are O-type, but not
12 all O-type are M series.

13 Q. Before the time you were discussing the sale of the
14 product line to Victory Energy, did you have any
15 conversations with anyone at Victory Energy relative to
16 whether or not M series boilers included membrane wall
17 technology?

18 A. We did not, I would say. We were not concerned
19 about that from the perspective of we were selling product
20 and receiving income cash flow to the company.

21 Q. How was Victory Energy supposed to know that M
22 series boilers did not include membrane wall technology?

23 A. In Annex 1 there's a description of what the product
24 line specifically is, right down to the detail of type of
25 construction and arrangement of side walls, front walls, rear

1 that.

2 Q. Was Erie Power paid on those jobs for that
3 engineering support?

4 A. On the case of the one that was the taller, narrower
5 boiler, yes, we were paid as an engineering study to do that
6 engineering work.

7 Q. And that was above and beyond any remuneration that
8 Erie Power would receive under the license agreement,
9 correct?

10 A. Yes. Correct.

11 Q. Mr. Gdaniec, I have handed you what's been marked as
12 Exhibit 6 in your deposition. This is a series of e-mails
13 between you and Mark White, Bates labeled IKE000342 and 343.
14 Do you recall receiving and sending these e-mails?

15 (Gdaniec Deposition Exhibit No. 6 marked for
16 identification.)

17 A. Yes, I do recall this, yes.

18 Q. As a general matter, do you believe Mark White
19 understood -- strike that. As a general matter, in January
20 2003, do you believe Mark White had the same understanding of
21 the definition of the term "standard M series boiler" that
22 you have attributed to that term?

23 A. Yes.

24 Q. How do you have that -- strike that. On what do you
25 base that understanding?

1 A. The period of time that he was in the company and in
2 discussions on the product line and aware of what the market
3 was asking for versus what the company had to offer as
4 standard products.

5 Q. Did Mark White ever say to you specifically that he
6 had the same understanding of the M series boiler phrase that
7 you have attributed today?

8 A. No. I can say we've never had that discussion.

9 Q. Okay. In your response to Mark on January 22, 2003,
10 at 8:36 a.m., which is in the middle of the first page of
11 this exhibit, it says, "Mark, Be careful on this one for
12 free. Dan and I spoke on it today and he believes that if
13 this is outside of the license agreement (which it is) then
14 we better get paid for it. I think you need to get together
15 with Dan and Stephen and Simon and resolve this matter pretty
16 quickly. From what I understand, this is way out of the
17 license agreement, welded walls and higher design pressure."
18 Do you see that?

19 A. Yes, I do.

20 Q. Do you recall writing that to Mark White?

21 A. No. But seeing it here I'm sure I did in the
22 e-mail, yes.

23 Q. Did you speak with Dan Levstek or Stephen Kang or
24 Simon Kassas relative to this e-mail?

25 A. No, I did not. Basically, in my opinion, it was

1 Mark White's responsibility, as the person that was managing
2 the license agreement at that time, to make sure that he had
3 concurrence with the executive management of the company.

4 Q. To the best of your knowledge, did Mark White have
5 concurrence with the executive management of the company?

6 A. I honestly don't know.

7 Q. Did you ever come to learn that Mark White was
8 operating without authority?

9 A. Not directly, no.

10 Q. Mark's response back is, "Thank you for your e-mail
11 message. The welded wall design will be handled by Victory,
12 and they will take responsibility and liability of the
13 change." Do you see that?

14 A. Yes, I do.

15 Q. This is with respect to the Atofina project in La
16 Porte, Texas. Do you see that at the bottom of the page?

17 A. Yes. I do.

18 Q. Do you recall the Atofina project?

19 A. I know that's one of the names of the boilers, but I
20 don't recall details on it in particular.

21 Q. Are you aware of whether or not Victory Energy
22 actually sold the boiler to Atofina?

23 A. Without looking at the records I could not tell you.

24 Q. Are you aware of the fact that Erie Power received a
25 4 percent royalty on that boiler sale?

1 A. I would assume that, if, in fact, they sold it,
2 under the license agreement we did receive a royalty. I
3 would assume so, yes.

4 Q. Did Erie Power support the Atofina project?

5 A. If there were questions specifically asked on it, I
6 would say, yes, we probably did, yes.

7 Q. Now, did you respond back to Mark in any way after
8 receiving his e-mail? The one that's at the top of the first
9 page, wherein he says, "Welded wall design will be handled by
10 Victory."

11 A. I do not recall if I responded specifically to this
12 or not.

13 Q. Did you believe that it was permissible under the
14 license agreement for Victory to sell the welded wall design
15 on that boiler as long as they handled it?

16 A. I would say given the timing in the company, were we
17 going to make an issue of a welded wall -- as you can see in
18 my concern back to him, "This is way out of the license
19 agreement, welded walls and higher design pressure." So from
20 my perspective -- I expressed my concern it was beyond the
21 agreement; however, given the context of where we were in the
22 company, it was revenue, and if the company chose to pursue
23 it and allow it to happen, then I didn't raise any further
24 concern.

25 Q. Did you voice any concern regarding your belief that

1 the assets.

2 Q. Did Mr. Coale ask you what was licensed under the
3 license agreement?

4 A. Yes.

5 Q. What did you tell him?

6 A. The products, and we went through the pages of the
7 license agreement, explained the product lines and the subset
8 of the O boiler that was licensed to Victory. And the
9 projects -- we went through the projects that they had been
10 successful to sell and the types of boilers they were
11 pursuing, yes.

12 Q. So you explained to Mr. Coale that Victory Energy
13 had sold predominantly boilers with welded wall technology?

14 MR. GISLESON: Objection. Mischaracterizes his
15 testimony.

16 A. No. We did not get into specifics like that.

17 Q. Did you discuss with Mr. Coale any perceived
18 breaches by Victory Energy of the license agreement?

19 A. Yes, we did.

20 Q. This is, again, in that same due diligence time
21 frame?

22 A. The only discussions with Mr. Coale were during due
23 diligence period, yes.

24 Q. What breaches did you describe to Mr. Coale during
25 those meetings?

1 A. I believe we identified 10 or 11. I don't recall
2 exactly what the 10 or 11 were, but they were conveyed to
3 Victory in writing, and that was part of the discussion.

4 Q. To the best of your recollection, did Victory Energy
5 approach Erie Power for permission to pursue other projects
6 outside the scope of the license agreement?

7 A. Yes.

8 Q. Do you recall the names of any of those projects?

9 A. Not specifically. I think there was a total of five
10 that they came back and specifically asked, and two of the
11 five we actually had written cooperation agreements, and at
12 that time it was getting very near the -- the sale in the
13 bankruptcy courts. So the other three projects were never
14 formalized into a cooperation agreement. However, Victory
15 understood that we would write those, and, you know, that
16 that was part of the -- the five was agreed to by EPTI that
17 we would support them and pursue it in joint.

18 Q. To the best of your knowledge, did Victory Energy
19 ever sell a boiler above 150,000 pounds per hour of steam
20 without the permission of Erie Power?

21 A. To the best of any knowledge, they never sold
22 anything beyond 150 period.

23 Q. Either with permission or otherwise?

24 A. With or without, yes. From my understanding of what
25 was sold, yes.

1 Q. Did you and Mr. Kang have discussions regarding his
2 negotiations with Victory Energy relative to the sale of the
3 O style boilers?

4 A. I had discussions with regards to this entire issue,
5 yes. Whether it was O series, M series, what dollar amounts
6 we were going to try to achieve from that, what it meant to
7 the ongoing business if we did this, lengthy discussions to
8 that.

9 Q. We've been throwing a lot of terms around, and I
10 want to get some clarification on -- you've already defined
11 for me what the M series boiler is. Was there such a thing
12 as an O series boiler at Erie Power?

13 A. No. O series was never in existence. O is the type
14 of boiler we build, versus a D type or an A type or --
15 characterizes the style of boiler.

16 Q. As you've already said, in your mind all Ms are O
17 style boilers, but not all O style boilers are M series
18 boilers?

19 A. That's correct.

20 Q. The draft purchase agreement that you first
21 received, was it a license agreement and option to purchase,
22 or was it simply a purchase agreement?

23 A. I believe it was just a purchase agreement. And in
24 our first initial draft or revision of it, we created a
25 license agreement document with option to purchase. And then

1 there was also an extension to the license agreement which
2 then clearly, in writing, broke out the M series boiler,
3 which is what the company was willing to sell, and then an
4 option to extend the license agreement to include all of the
5 O series products within that range.

6 Q. Why did you -- strike that. Do you have an
7 understanding of why Erie Power went from a purchase
8 agreement to a license with option to purchase?

9 A. It was all with regards to the bankruptcy issues.
10 Could -- and this is part of the discussions with the
11 lawyers. Was it even an alternative for EPTI to sell the
12 products out under the bankruptcy or -- could it be done,
13 could it not be done. I believe the discussions, which I was
14 not part of, that we could do the license agreement because
15 it was demonstrating we were trying to bring in revenue as
16 part of the reorganization, but potentially could not agree
17 to sell it, along those lines.

18 Q. Do you recall that after your revisions to the
19 license agreement and option to purchase that you had some
20 correspondence back and forth with Mark White?

21 A. Yes. Some very heated discussions as well.

22 Q. I'm handing you what we've marked as Gdaniec Exhibit
23 24, but before I get into that document, you just said you
24 had some heated discussions with Mark White?

25 (Gdaniec Deposition Exhibit No. 24 marked for

1 identification.)

2 A. Yes.

3 Q. Without looking at the document, can you give me a
4 synopsis of what those discussions entailed?

5 A. Yes. The negotiations between Victory and EPTI were
6 being handled by Mr. Kang and Victory. I'm not sure who in
7 Victory, but I'd say Mr. Kang and at that time Mr. Kang's
8 assistant, George Doremus. And there was nobody else in the
9 company involved. At one point is when it got turned over to
10 me and I began to modify, change, alter, expand, clarify the
11 documents at which -- which at that point -- then it was
12 discussions with Mr. White with regards to what I was doing,
13 and I was being negative towards the whole process, and, you
14 know, confusing Stephen with new terminology and new
15 subtleties of the equipment.

16 You know, they were -- they had moved so far along,
17 and this was going to save EPTI with cash coming into the
18 company. So it was a good thing and why can't I just, you
19 know, leave it be and move forward. Apparently it had gotten
20 pretty far along with regards to negotiations or discussions
21 between, at that time, Stephen Kang and Victory with moving
22 forward with some kind of arrangement. That, I would assume,
23 probably prompted someone to write the draft saying, okay,
24 we've gotten over the initial discussion, let's draft a
25 document and get this thing moving forward.

1 Q. For the record, Exhibit 24 is VE01009 through 1012,
2 and this is a series of e-mails. The first e-mail is dated
3 March 3rd, and it's from Mark White to Stephen Kang and Dan
4 Levstek. It says, "Stephen and Dan, A draft of the annex is
5 enclosed for your comment. Regards, Mark White." Do you see
6 that?

7 A. Yes, I do.

8 Q. Do you know which annex Mr. White is referring to
9 there?

10 A. No, I do not.

11 Q. And then, a couple up from that, Dan Levstek writes
12 back and says, "Attached is the marked-up agreement with our
13 comments. We would propose it to be an amendment to the
14 existing license agreement with the option to purchase
15 included. This would allow the portions of the license that
16 are not changed to remain in place if the option is not
17 exercised." Do you see that?

18 A. Yes, I do.

19 Q. At this point you're still not carbon copied on this
20 e-mail --

21 A. Correct.

22 Q. -- it's to Mark White, with carbon copies to John
23 Viskup, George Doremus, and Stephen Kang from Dan Levstek.
24 And the next e-mail is from Mark, and it's to Dan, Stephen,
25 George, and yourself with a carbon to John Viskup. Do you

1 see that?

2 A. Yes, I do.

3 Q. The subject is "Completed Annex," and Mark says,
4 "Gentlemen, based on our recent discussions relative to a
5 technology purchase through Rule 363, the amendment as
6 provided would not be appropriate for this purpose. The
7 document outlining the sale of the technology requires
8 development. However, the Annex 2 could be utilized to
9 define the technology purchase. In regards we have the
10 following comments to the annex," and then it identifies a
11 number of statements, and one of those is, "Boiler
12 technology. Paragraph No. 1. This paragraph requires
13 modification as it limits the purchase to that of the M
14 series and is to be expanded to include O type boilers. It
15 has always been the intention of VEO to purchase the O boiler
16 technology which includes the M series boilers." Do you see
17 that?

18 A. Yes, I do.

19 Q. So you understood that Victory Energy was looking to
20 purchase the entire O series line?

21 A. Yes.

22 Q. Or O style?

23 A. Yes. And they identify here that they understood
24 the difference between what the M series and O boilers were,
25 clearly by his comment.

1 Q. In March of 2004?

2 A. Yes.

3 MR. SHEEAN: I'd like to move to strike the last
4 answer as nonresponsive.

5 MR. GISLESON: Disagree.

6 Q. Above that is an e-mail from you to Mark saying, "We
7 met internally yesterday and this morning with Stephen and
8 George in the loop by conference call and discussed the
9 agreement and your comments and offer the attached for your
10 consideration. I have a version of the full agreement, but
11 did not include because I need to proofread the Annex 1 one
12 more time with the changes that are addressed in this
13 attachment." Do you see that?

14 A. Yes, I do.

15 Q. And Mark writes back to you, "Bob, My first pass is
16 that of extreme disappointment. We are interested in
17 purchasing the O line up to 165,000 PPH. EPTI needs to
18 determine if you are interested in selling the line. I will
19 discuss with John Viskup and develop a formal response." Do
20 you see that?

21 A. Yes, I do.

22 Q. You said a minute ago that you believe that
23 Paragraph No. 1 under boiler technology demonstrates Victory
24 Energy understood the difference between M series and O type;
25 is that right?

1 A. Yes. Correct.

2 Q. Isn't it possible that Mark White was referring to
3 the increase in the steam capacity above 150,000 pounds per
4 hour to designate the difference between the M series and the
5 O?

6 A. No.

7 MR. GISLESON: Objection.

8 Q. Had you ever had a conversation with Mark White
9 where you specifically were able to confirm that?

10 A. Yes. Because the discussion was all-around relative
11 to our distinction of what the M series was versus what the O
12 boiler line could be, and Victory wanted the full flexibility
13 of what the O boiler could be and not be limited to what the
14 M series was.

15 Q. And that was based on what Erie Power was defining
16 the M series to be, correct?

17 A. And what -- yes. And what Erie Power was willing to
18 sell under this discussion that we're having here in the
19 e-mails. That we weren't interested in selling the entire O
20 boiler line. We were only interested to sell the subset
21 called the M series technologies.

22 Q. To the best of your knowledge, there were no similar
23 discussions before the execution of the original license
24 agreement regarding the Erie Power understanding of the M
25 series boiler line, correct?

1 provide Victory Energy with a perpetual license for the use
2 of the Keystone name?

3 A. Because, in the boiler industry, the Keystone boiler
4 has always been attributed back to our product line, and that
5 really is 80 percent of the nature of the business, having
6 reputation and identifiability in the industry. People see a
7 Keystone boiler, and they know it was our product and always
8 was our product.

9 Q. Is that still true today?

10 A. From the perspective of CMI's business, I'm -- it
11 has no meaning to CMI's business. In the industrial boiler
12 business, yes, the Keystone name has a very solid and
13 long-lived reputation, yes.

14 Q. Is it still attributed back to Erie Power and its
15 predecessors, to the best of your knowledge?

16 A. I would say, yes, to the best of my knowledge.

17 Q. Do you know if Indeck Keystone Energy is currently
18 marketing any Keystone boilers?

19 A. I'm not aware of their day-to-day business.

20 Q. Page 7435 through 7436 sets forth EPTI concerns
21 regarding VEO performance. Do you see that?

22 A. Yes, I do.

23 Q. Did you draft this document as well?

24 A. Yes, I did.

25 Q. Was this attached to your March 26th letter to Mark

1 White?

2 A. Yes. It was part of this entire document.

3 Q. Here you set forth a number of problems or --
4 concerns, as you identify it, regarding VEO performance under
5 the existing agreement?

6 A. Yes.

7 Q. Why did you wait 15 months into the agreement to set
8 forth Erie Power's concerns regarding the license agreement?

9 MR. GISLESON: Objection. Misleading,
10 mischaracterizes the evidence.

11 A. I would say EPTI as a whole did not wait until this
12 period of time to put forth the concerns. There had been
13 concerns that had been raised throughout the course of the
14 agreement. This was the first document that formalized them
15 all together in one document to say we'd also like to
16 address -- we were in the discussion with Victory to move
17 forward with business, either amend license, extend license,
18 purchase it, and we looked at it also as the opportunity to
19 now, in the timing of the company -- the bankruptcy was
20 moving positively, there was belief we were moving forward.
21 It was time to get back to start looking at all of the open
22 issues in the business. So we accumulated the issues in this
23 one document. Committed the issues we discussed previously.

24 Q. Can you identify a single document where Erie Power
25 specifically identified to Victory Energy performance

1 Q. Strike that. Did someone from EPTI ask you to
2 become involved in the process leading up to a finalization
3 of the license agreement with Victory Energy Operations?

4 A. No. Not specifically.

5 Q. How about generally?

6 A. I was company chief engineer, and had role and
7 responsibility for the care and custody of the technology,
8 so I didn't need to be asked to be involved in that
9 discussion.

10 Q. Did you believe it was appropriate for you to
11 participate in that discussion?

12 A. Yes.

13 Q. What did you see your role as being?

14 A. Protector and maintainer of the intellectual
15 property and technology of the company.

16 Q. Did you fulfill that goal in connection with this
17 license agreement?

18 A. I would say, in hindsight, no. Looking at the time
19 we did it, we did the best that we thought we could do, yes.

20 Q. Now, specifically with respect to Annex 1, how did
21 you seek to protect and maintain the technology?

22 A. In Annex 1 of the license agreement, we tried to be
23 as specific to the construction features and geometry of what
24 the boiler mind was -- in our mind was intended to be. From
25 the perspective of types of detail of drawing or construction

1 January 2003?

2 A. Functionally he was a graphics group leader. I'm
3 not sure the title he had. He managed and coordinated
4 activities of the drafting area.

5 MR. SHEEAN: And that was asked and answered.

6 Q. To your knowledge, did he have any responsibilities
7 with respect to the Keystone?

8 A. That was -- his primary historical experience was in
9 the package boiler line.

10 Q. So you understood that Mr. Briggs had an
11 understanding as to the features associated with the Keystone
12 M series?

13 A. Yes.

14 Q. I'd like to show you what's been marked as Gdaniec
15 Exhibit 33. It's a two-page document stamped IKE354 to 355.
16 Looking at the first page, do you see how at the bottom of
17 this is a copy of the January 30, 2003 e-mail from Mark White
18 to you asking you to review and provide your comments?

19 (Gdaniec Deposition Exhibit 33 marked for
20 identification.)

21 A. Yes.

22 Q. Above that is an e-mail that Dave Briggs drafted on
23 January 30th, shortly after Mr. White sent the January 30th
24 e-mail in which he is stating that he looked at the annex as
25 well and had the following comments to what should be added.

1 Do you see that?

2 A. Yes, I do.

3 Q. And Mr. Briggs wrote, "There is no mention of the
4 following: Tangent furnace wall tubes, tangent outer side
5 wall tubes; the units are only saturated, no superheater; the
6 feedwater connection is in the lower drum." And he has a
7 question, "Is the outer side casing flat or ribbed?" Then he
8 writes, "The front and rear wall construction is that of
9 refractory, no front wall tubes at all." As to his comments,
10 A, B A C, D, and F, which are the ones without a question
11 involved, did he accurately describe the standard M series
12 Keystone watertube package boiler?

13 A. Those were -- what he's identified are significant
14 issues in the M series that were not identified.

15 Q. Did you agree that those were significant issues
16 that should be identified in the annex of the license
17 agreement?

18 A. Yes.

19 Q. Now, when we looked at the draft of the annex that
20 was provided by Mark White to you on January 30, 2003, were
21 there any drawings associated with that draft for Annex 1?

22 A. No. In the original draft, no.

23 Q. Do you agree that in his original draft Mr. White
24 did not have any mention of tangent furnace wall tubes,
25 tangent outer side wall tubes, that the units are only

1 saturated, and that the front and rear wall construction's
2 that of refractory?

3 A. Yes. There's no mention of construction detail in
4 the original annex.

5 Q. Did you have a discussion with Mr. Briggs about the
6 need to incorporate those features into Annex 1 that were
7 identified in Mr. Briggs' January 30, 2003 e-mail?

8 A. Not that I recall directly with Mr. Briggs.

9 Q. Did you have any conversations with Mark White
10 concerning whether those features should be incorporated into
11 Annex 1 of the license agreement?

12 A. Not directly as I recall.

13 Q. Indirectly?

14 A. Don't recall.

15 Q. Do you know whether those features, in fact, were
16 included in Annex 1?

17 A. In the final version of the annex we added drawings
18 and sketches that specifically define construction details.

19 Q. If we could look at Exhibit 5, which contains a copy
20 of the final annex, do you see how that is initialed in the
21 lower right-hand corner?

22 A. Yes.

23 Q. Would you recognize the initials to be those of John
24 Viskup and Mark White?

25 MR. SHEEAN: I'm going to object. Lack of

1 foundation.

2 A. Mark White, MJW, I recognize. I've never seen -- I
3 assume that's John Viskup, but I've never seen his --

4 Q. Now, in looking at Annex 1, the version that was
5 executed by the parties, does Annex 1 have any mention to
6 tangent furnace wall tubes?

7 A. There's a section that was added in the sketches
8 that shows, specific to the details, type of construction of
9 the side walls being tangent tubes, the front wall being
10 refractory, and the rear wall being tube and tile.

11 Q. What page is that?

12 A. Page 23 in the -- what's marked here as Page 23 of
13 the annex.

14 Q. Of Exhibit 5?

15 A. That's marked as Fuhrman 24. Yep. Gdaniec 5.

16 Q. And that shows, on that page, both tangent furnace
17 wall tubes as well as tangent outer side wall tubes?

18 A. Yeah. There's a specific note on the drawing that
19 the furnace wall is tangent tube and the outer wall is
20 tangent tube. The front wall is shown as castable refractory
21 and insulating fire brick. The rear wall is shown as tube
22 and tile -- tubes with tile insulation. And there's a note
23 on the drawing itself that says, "Front wall refractory, rear
24 wall tube and tile, outer wall tangent, furnace walls
25 tangent."

1 Q. Based on your review of the final version of Annex
2 1, does it appear to you that the specific comments raised by
3 Dave Briggs to Mark White were incorporated in that final
4 version of Annex 1?

5 A. Yes.

6 Q. After the date of the Annex 1 finalized set, which
7 is on or about February 2, 2003, did Mark White ever come
8 back to you and say that it was necessary to amend Annex 1 so
9 that membrane walls would become within the scope of the
10 license agreement?

11 A. No. There's no specific discussion with me.

12 Q. Did you ever see any written document in which the
13 license agreement was amended to incorporate membrane wall
14 technologies being within the scope of the agreement?

15 A. No.

16 Q. Now, you were asked some questions about sales by
17 VEO that included membrane wall technology during the time
18 that EPTI was a licensor. Do you recall that?

19 A. Yes.

20 Q. Were there certain sales that VEO was making in
21 which you didn't learn about the membrane walls being in the
22 design until after the sale had already been accomplished?

23 A. In general, we weren't watching and monitoring
24 exactly what the configuration of the boiler they were
25 selling was. Just being aware of steam capacity probably as

1 being the significant one.

2 Q. Was VEO not disclosing, in each of the instances, at
3 the time of the sale or before the time of sale that it was
4 including membrane walls?

5 MR. SHEEAN: Objection. Asked and answered.

6 A. I would say, not every instance, but we also weren't
7 asking for it to follow up.

8 Q. Did you, in fact, become aware that VEO was
9 incorporating membrane technology in its boilers that were
10 sold under the license agreement?

11 A. Yes.

12 Q. Was it your belief that EPTI, with respect to each
13 of those specific boilers, permitted VEO to sell those
14 boilers with that feature?

15 A. Yes.

16 Q. Did you ever send anything in writing to VEO in
17 which you authorized them, after March 26, 2004, which was
18 the date of your letter expressing or identifying concerns
19 with respect to VEO's performance, that they could sell M
20 series boilers with membrane walls whenever they wanted?

21 A. No. I never sent anything like that.

22 Q. I'd like to show you what's been marked as Gdaniec
23 Exhibit 34, which is a document stamped IKE4410 to IKE4429.
24 Do you recognize this to be an e-mail from Marie Fisk, on
25 behalf of Mark White, to John Viskup on the subject of

1 Q. Did Mark White ever tell you that Annex 1 was in any
2 way inconsistent with the license agreement that was signed
3 by Victory and EPTI?

4 A. No.

5 Q. In your view, does Annex 1 clearly define the
6 standard package watertube boiler that was licensed to VEO?

7 A. As clearly as can be described, yes.

8 Q. Did Mark White at any time come up to you and say he
9 had questions about the interpretation of Annex 1?

10 A. No.

11 Q. Did you believe it was necessary for you to provide
12 any further comments to Mark White after you saw Dave Briggs'
13 e-mail to Mark White?

14 A. Dave Briggs' comments were probably a separate
15 avenue of it. Engineering created those drawings to be put
16 in there, so that was in parallel to or shortly thereafter.

17 Q. If we look at Annex 1, specifically Page 23, which
18 is stamped VEO1195, can you identify a date on there for when
19 those drawings were created?

20 A. Well, the reference on the drawing is a KD sheet
21 dated 1/14 -- can't read the numbers. It's too hard to read.

22 Q. I thought it was 2003. If we look at VEO1196, can
23 you read the date on that drawing?

24 A. Yeah. That's 1/14/03.

25 Q. And then, if we go to the next page, which is

1 VEO1197, can you read the date on that drawing?

2 A. Yeah. 1/14/03.

3 Q. Now, who asked engineering to prepare the drawings
4 that became part of Annex 1?

5 A. I'm not sure anyone specifically asked the drawings
6 be created, but in the discussion of how do we capture the
7 definition of the product line, the decision was made to
8 create drawings or take standard sheets and put them together
9 as -- to form part of the annex.

10 Q. Who made that decision?

11 A. It was probably collective. I can't recall that it
12 was me in particular, but around the discussion of, how do we
13 go ahead and protect ourselves, what's the best way to do it,
14 it was proposed, I assume, that drawings be put in, but I
15 can't tell you for sure.

16 Q. Collectively who do you believe was involved in that
17 process?

18 A. Ted Fuhrman; myself; Dave Briggs, might have been
19 Mark White in the discussion; Neil Bradwell, who was a design
20 engineer in the group --

21 MR. SHEEAN: I'm going to object to this as
22 speculation.

23 Q. You can finish.

24 A. That's it.

25 Q. Do you know who was responsible for providing the

1 Q. Now, when the drawing has the words, "Keystone M
2 series standard" on it, what is meant by the word "standard"?

3 A. It has a lot of connotation within the company. In
4 this case, the Keystone M series boiler had the most
5 developed standards that were just copy/paste to use for the
6 future. So this drawing is what we call an RTI, refractory
7 tile and insulation, drawing standard was used. So that
8 never changed boiler to boiler.

9 Q. When the word "standard" was used in the license
10 agreement, what was meant by the word "standard" there?

11 A. The grouping of the well-defined and well -- well
12 matured product line. The boilers.

13 Q. As of January 2003, did you have an understanding as
14 to the reputation of Keystone in the marketplace?

15 A. The Keystone boiler, yes.

16 Q. How long had the Keystone boiler been in the
17 marketplace?

18 A. I'm guessing 40, 50 years probably. 1940s, 1950s
19 time frame.

20 Q. How did you become familiar with the reputation of
21 Keystone?

22 A. When I started with the company in 1985, '86 time
23 frame. That was just the trademark name and the product was
24 the Keystone -- was the cornerstone of the company.

25 Q. Have you had conversations with individuals outside